

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOEL SOTO-RODRIGUEZ,

Petitioner,

Case No. C15-123-JLR-BAT

V.

ICE FIELD OFFICE DIRECTOR.

Respondent.

REPORT AND RECOMMENDATION

Proceeding *pro se* and *in forma pauperis*, Joel Soto-Rodriguez filed a habeas corpus petition under 28 U.S.C. § 2241, seeking supervised release from immigration detention or a bond hearing. Dkt. 8 at 2. Respondent has moved to dismiss, arguing that Mr. Soto-Rodriguez’s detention is lawful and that he is not entitled to a bond hearing before an Immigration Judge (“IJ”) because he has already received three such hearings. *See* Dkt. 10. Mr. Soto-Rodriguez did not file a response. After the motion to dismiss was ripe for the Court’s consideration, Mr. Soto-Rodriguez was released from immigration detention on an order of supervision. Dkts. 14 & 15. Respondent thus maintains that this action is now moot. Dkt. 14. As discussed below, the Court recommends that respondent’s motion to dismiss be **GRANTED**, Mr. Soto-Rodriguez’s habeas petition be **DENIED**, and this action be **DISMISSED**.

BACKGROUND

Mr. Soto-Rodriguez is a native and citizen of El Salvador who entered the United States in 1993, as a legal permanent resident. Dkt. 11-9 at 44. In 2008, he was convicted of Manslaughter in the First Degree and Tampering with a Witness. Dkts. 11-1 at 13, 11-2 at 2-3, 11-9 at 46. On September 26, 2012, he was transferred from state custody to the custody of U.S. Immigration and Customs Enforcement (“ICE”). Dkt. 11-2 at 11-12; *see also* Dkt. 11-3 at 2-3.

Once Mr. Soto-Rodriguez was in federal custody, the Department of Homeland Security (“DHS”) initiated removal proceedings against him. Dkt. 11-3 at 5. ICE also made an initial custody decision to continue Mr. Soto-Rodriguez’s detention based on the mandatory detention provisions of 8 U.S.C. § 1226(c). *Id.* at 8. On September 18, 2013, Mr. Soto-Rodriguez received a bond hearing before an IJ, who denied bond. Dkt. 11-4 at 10. On November 14, 2013, an IJ ordered Mr. Soto-Rodriguez removed to El Salvador. Dkt. 11-5 at 2-28. He appealed the removal order to the Board of Immigration Appeals (“BIA”). *Id.* at 30-32.

On March 18, 2014, while his appeal was pending, Mr. Soto-Rodriguez received a bond hearing pursuant to *Franco-Gonzalez v. Holder*, No. CV 10-2211 DMG, 2013 WL 3674492 (C.D. Cal. Apr. 23, 2013).¹ Dkts. 11-6 at 4-5 & 11-7 at 2. The IJ denied bond, finding that DHS met its burden of demonstrating by clear and convincing evidence that Mr. Soto-Rodriguez posed a danger to the community and a flight risk. Dkt. 11-7 at 2-15, 17. Mr. Soto-Rodriguez did not appeal this bond determination to the BIA. *See* Dkt. 11-9 at 29.

On April 28, 2014, the BIA dismissed Mr. Soto-Rodriguez's appeal of his removal order.

¹ In *Franco-Gonzalez*, the court certified a class of aliens (“Sub-Class 2”) who were (1) detained by ICE for more than six months and (2) identified by a medical personnel as having a serious mental disorder. Under *Franco-Gonzalez*, Sub-Class 2 aliens are entitled to bond hearings applying the standard of proof set forth under *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011). Although *Franco-Gonzalez* is not binding in this District, ICE has chosen to apply the case to detainees here. See Dkt. 10 at 4 n.2.

1 Dkt. 11-7 at 20-21. He filed a petition for review with the Ninth Circuit. *Id.* at 23-25; *Soto-*
2 *Rodriguez v. Lynch*, Case No. 14-71419 (9th Cir. May 19, 2014).

3 On August 27, 2014, Mr. Soto-Rodriguez received a third bond hearing, this time
4 pursuant to *Casas-Castrillon v. Department of Homeland Security*, 535 F.3d 942 (9th Cir. 2008).
5 Dkt. 11-9 at 2-24. The IJ denied bond, again finding that DHS met its burden of demonstrating
6 that Mr. Soto-Rodriguez presented a danger to the community and a significant flight risk. *Id.* at
7 26, 29-33. He did not appeal this determination to the BIA.

8 Mr. Soto-Rodriguez initiated the instant action in January 2015. Dkt. 1. On April 14,
9 2015, the Ninth Circuit granted his petition for review of his removal order and remanded to the
10 BIA for further proceedings. Dkt. 13 at 1 n.1; *Soto-Rodriguez*, Case No. 14-71419, Dkt. 46 (9th
11 Cir. Apr. 14, 2015). On April 23, 2015, he was released from immigration detention on an order
12 of supervision. Dkts. 14 & 15.

13 DISCUSSION

14 Mr. Soto-Rodriguez seeks two forms of habeas relief: supervised release from
15 immigration detention or a bond hearing. Dkt. 8 at 2. Given that he has been released on
16 supervision, his request for supervised release is moot. *See, e.g., Abdala v. I.N.S.*, 488 F.3d
17 1061, 1065 (9th Cir. 2007) (claims are moot where court cannot provide the requested relief).
18 Release on supervision, however, does not necessarily render his request for a bond hearing
19 moot. *See Rodriguez v. Hayes*, 591 F.3d 1105, 1117-18 (9th Cir. 2010) (petitioner's claim was
20 not moot despite his release). Nevertheless, Mr. Soto-Rodriguez has already received three bond
21 hearings, the most recent of which was conducted pursuant to *Casas-Castrillon*. He did not
22 appeal the denial of bond to the BIA, *see Leonardo v. Crawford*, 646 F.3d 1157, 1159 (9th Cir.
23 2011) (petitioner challenging the denial of bond after a *Casas* hearing must appeal to the BIA

1 before seeking habeas relief), nor does he identify any constitutional or legal error in the hearings
2 he received, *see Singh v. Holder*, 638 F.3d 1196, 1200 (9th Cir. 2011) (district courts have
3 jurisdiction to review *Casas* hearing determinations for constitutional claims and legal error). As
4 such, he is not entitled to yet another bond hearing.

5 CONCLUSION AND RIGHT TO OBJECT

6 For the foregoing reasons, the Court recommends **GRANTING** respondent's motion to
7 dismiss, Dkt. 10, **DENYING** Mr. Soto-Rodriguez's habeas petition, Dkt. 8, and **DISMISSING**
8 this action. A proposed order accompanies this Report and Recommendation.

9 This Report and Recommendation is not an appealable order. Therefore a notice of
10 appeal seeking review in the Court of Appeals for the Ninth Circuit should not be filed until the
11 assigned District Judge enters a judgment in the case. Objections, however, may be filed and
12 served upon all parties no later than **May 19, 2015**. The Clerk should note the matter for **May**
13 **22, 2015**, as ready for the District Judge's consideration if no objection is filed. If objections are
14 filed, any response is due within 14 days after being served with the objections. A party filing an
15 objection must note the matter for the Court's consideration 14 days from the date the objection
16 is filed and served. The matter will then be ready for the Court's consideration on the date the
17 response is due. Objections and responses shall not exceed eight pages. The failure to timely
18 object may affect the right to appeal.

19 DATED this 28th day of April, 2015.

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21 
22 BRIAN A. TSUCHIDA
23 United States Magistrate Judge